

BOARD OF APPEALS CASE NO. 4847	*	BEFORE THE
APPLICANT: Ivy Hill Nursery Co., Inc.	*	ZONING HEARING EXAMINER
REQUEST: Special Exceptions to allow	*	OF HARFORD COUNTY
construction services and commercial	*	
vehicle and equipment storage in the AG	*	
District; 2415 Old Joppa Road, Joppa	*	Hearing Advertised
	*	Aegis: 6/23/99 & 6/30/99
HEARING DATES: December 7, 1998,	*	Record: 6/25/99 & 7/2/99
February 22, 1999, March 1 and 8, 1999	*	

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Ivy Hill Nursery Co., Inc. Is requesting a special exception pursuant to Section 267-53(H)(1) of the Harford County Code to allow construction services and suppliers in an AG District and a special exception pursuant to Section 267-53(D)(1) to allow commercial vehicles and equipment storage in an AG District.

The subject parcel is located at 2415 Old Joppa Road, Joppa, MD and is more particularly identified on Tax Map 60, Grid 4F, Parcel 89. The parcel is zoned AG, is located in the First Election District and consists of 7.003 acres more or less.

Ivy Hill Nursery Co., Inc. (Ivy Hill) is a full service landscape contractor. It operates its business from the subject property. Witnesses for the Applicant testified that during winter months there is little activity at the site, however, during the active warm season, Ivy Hill employs 18 persons plus three officers. There are parked on the property two pick up trucks, four 10' by 12' stake body trucks, two flat bed trucks, three small tractors, six walk behind mowers, six lawn tractors, accessory equipment and two large storage trailers, one being 18 feet long. Of the 18 employees, 12 arrive together in a company van and work begins around 7:30 a.m. At that time, equipment is loaded and most of the workers and equipment depart for the work sites. Generally work is complete at the end of the day. Saturdays are used for catch up work and there is no work on Sundays.

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There are several buildings on the property including a two story bank farm, block shed, a residence, fuel tanks and a trash dumpster. The latter two items are located near an employee parking lot. The Applicant has also constructed a new entrance on Greenspring Avenue. This entrance was constructed and is in use without any county or state approvals.

The Applicant's expert traffic witness testified that there are no line of sight issues at the intersection of Greenspring Avenue and Old Joppa Road. He did indicate that the intersection could be widened to allow larger trucks to keep off neighboring lawns when turning in or out of Greenspring on to or from Old Joppa.

Mr. Dudley Campbell testified as an expert site designer. Initially, he introduced a new site plan which showed additional landscaping, berms to the east of the driveway at heights of 10 to 12 feet, and evergreen plantings along the top. Additionally, the new site plan will create additional evergreen and berm screening to the east of the block shed. All of this landscaping is proposed so that optimal screening can be provided. Mr. Campbell admitted, however, that the site could not be completely screened from view of adjacent properties. The property is 50 feet higher in elevation than that of neighboring properties. Because of the height and size of the parcel, even after berms and evergreen plantings were completed, several neighboring properties would still be able to see at least some of the operations and vehicles stored there. One suggestion made by Campbell was to completely surround the property with fencing.

Mr. Dennis Canavan appeared and qualified as an expert land planner. Mr. Canavan opined that the request complied with the standards set forth in the Harford County Code for special exceptions of this nature. Mr. Canavan did not recommend fence screening around the perimeter of the property.

Mr. Anthony McClune testified for the Department of Planning and Zoning. The witness reiterated the position of the department and reviewed the proposed conditions of approval.

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Richard Windsor of 2051 Old Joppa Road appeared in opposition to the request. He has lived at this address for 30 years. He introduced a number of photographs into evidence that depict the subject property and the adjacent properties. He objected to the request for a number of reasons:

1. The uses should not have started without a permit.
2. Trucks in excess of 26,000 GVW are often on the property of Ivy Hill but are not permitted on Old Joppa Road.
3. Employees of Ivy Hill drive fast and without regard for safety of neighbors.
4. Contrary to the Applicant's claims, trucks often leave as early as 6:00 a.m. and don't return until after dark and as late as 9:00 p.m.
5. Old Joppa Road is dangerous and there have been a number of accidents at the intersection of Greenspring and Old Joppa.
6. He will still see the trucks and other activities on the site despite the proposed screening and berms.
7. He believes the proposed approval will serve to depreciate the value of his property.

Mr. Thomas Gay of 2602 Franklinville Road appeared in opposition. The witness reiterated some of the concerns expressed by Mr. Windsor but added that the presence of fuel tanks on the property caused him concern regarding potential contamination of wells and a small stream located close to the fuel tanks. Mr. Gay opined that a commercial operation of this magnitude was out of place in a quiet rural residential community such as this.

Mr. Donald L. Irvine of 2702 Greenspring Avenue appeared in opposition to the request. Mr. Irvine was particularly annoyed at the noise which emanates from the Ivy Hill property. The noise, coupled with his continuing view of the vehicles and operations of Ivy Hill were of concern to the witness who believed this would adversely impact the quality of his life.

Numerous other neighbors appeared in opposition to the request. While many of the concerns were duplicative there were concerns expressed regarding the number of strangers in the neighborhood, damage to lawns caused by turning trucks, lighting which disturbs sleep, unkempt conditions of brush areas, and the general feeling that a commercial operation such as that conducted by Ivy Hill is not in harmony with the surrounding residential community.

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CONCLUSION:

The applicable standards for special exception approvals of this nature are set forth in Harford County Code Sections 267-51, 267-52, 267-53(H)(1), 267-53(D)(1) which provide:

Section 267-51:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52:

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.

Section 267-53(H)(1):

“Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.”

Section 267-53(D)(1):

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“Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:

- (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**
- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
- (c) A minimum parcel area of two (2) acres shall be provided.”**

Additionally, in considering a special exception, the provisions of Section. 267-9(l) must be considered which provides:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**

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- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

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The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

As a threshold finding, the Hearing Examiner concludes that the Applicant cannot meet the minimum standards required by the Harford County Code. While the Applicant has proposed extensive evergreen plantings and the creation of berms, it is undisputed that the Ivy Hill operations cannot be fully screened from adjacent properties. Contributing to this is the higher elevation of the subject parcel compared to surrounding properties. This factor alone would compel the Hearing Examiner to recommend a denial of the request.

However, applying the standards set forth by the Maryland Courts and recited above, the hearing Examiner also finds that the Applicant's operations are not compatible with the surrounding neighborhood and will have a greater impact at this location than if it were located elsewhere within the AG zone. This property adjoins rural residential properties. The Harford County Code does not permit the proposed uses, even by way of special exception, in the RR district. While the subject property is zoned AG, the impact of the operation will be to RR properties. These impacts will include noise, traffic, vehicular and equipment storage, a large number of employees coming to and going from the property, and an unspecified number of deliveries to the property, often in large trucks. Moreover, photographs entered into evidence clearly indicate that the existing roads in the immediate vicinity are not designed for large vehicle traffic and, in some places, very dangerous conditions could exist. The Applicant has constructed an unpermitted entrance on to Greenspring Avenue which is used by all of the vehicles entering and leaving the property. Photographic evidence clearly indicated that large vehicles are unable to fully negotiate the turn from Old Joppa to Greenspring and have caused damage on numerous occasions to at least one lawn at that location.

Lastly, there was conflicting testimony regarding the hours of operation of Ivy Hill. The Applicant's witnesses testified that hours begin between 7:30 and 8:00 a.m. and end before 6:00 p.m. Neighbors testified that hours begin around 6:00 a.m. and often do not end until 9:00

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p.m. The Applicant has shown a considerable disregard already for Harford County law, operating an unpermitted business on the property, storing vehicles and equipment without county approval and constructing an unpermitted driveway for ingress and egress to Greenspring Avenue. Under the circumstances, the Hearing Examiner has some doubts as to whether the Applicant would comply with any requirements that might be imposed as a condition of approval.

For the reasons stated herein, the Hearing Examiner respectfully recommends that the Applicant's requests be denied in their entirety.

Date JUNE 24, 1999

William F. Casey
Zoning Hearing Examiner